

(iii) The recipient(s) or intended recipient(s);

(iv) Its physical location; and

(v) A description of its relevance to the matters in dispute.

(3) A complete description of the manner in which the complainant identified all persons with information and designated all documents, data compilations and tangible things as being relevant to the dispute, including, but not limited to, identifying the individual(s) that conducted the information search and the criteria used to identify such persons, documents, data compilations, tangible things, and information;

(e) The reply shall attach copies of all affidavits, documents, data compilations and tangible things in the complainant's possession, custody, or control upon which the complainant relies or intends to rely to support the facts alleged and legal arguments made in the reply.

(f) The complainant may petition the staff, pursuant to § 1.3 of this chapter, for a waiver of any of the requirements of this section. Such waiver may be granted for good cause shown.

§ 8.30 Motions.

(a) A request to the Commission for an order shall be by written motion, stating with particularity the grounds and authority therefor, and setting forth the relief or order sought.

(b) All dispositive motions shall contain proposed findings of fact and conclusions of law, with supporting legal analysis, relevant to the contents of the pleading. Motions to compel discovery must contain a certification by the moving party that a good faith attempt to resolve the dispute was made prior to filing the motion. All facts relied upon in motions must be supported by documentation or affidavits pursuant to the requirements of § 8.23(c) of this subpart, except for those facts of which official notice may be taken.

(c) The moving party shall provide a proposed order for adoption, which appropriately incorporates the basis therefor, including proposed findings of fact and conclusions of law relevant to the pleading. The proposed order shall be clearly marked as a "Proposed Order." The proposed order shall be submitted both as a hard copy and on computer disk in accordance with the requirements of § 8.36(d) of this subpart. Where appropriate, the proposed order format should conform to that of a reported FCC order.

(d) Oppositions to any motion shall be accompanied by a proposed order for adoption, which appropriately incorporates the basis therefor, including proposed findings of fact and conclusions of law relevant to the pleading. The proposed order shall be clearly captioned as a "Proposed Order." The proposed order shall be submitted both as a hard copy and on computer disk in accordance with the requirements of § 8.36(d) of this subpart. Where appropriate, the proposed order format should conform to that of a reported FCC order.

(e) Oppositions to motions may be filed and served within five business days after the motion is filed and served and not after. Oppositions shall be limited to the specific issues and allegations contained in such motion; when a motion is incorporated in an answer to a complaint, the opposition to such motion shall not address any issues presented in the answer that are not also specifically raised in the motion. Failure to oppose any motion may constitute grounds for granting of the motion.

(f) No reply may be filed to an opposition to a motion.

(g) Motions seeking an order that the allegations in the complaint be made more definite and certain are prohibited.

(h) Amendments or supplements to complaints to add new claims or requests for relief are prohibited. Parties are responsible, however, for the continuing accuracy and completeness of all information and supporting authority furnished in a pending complaint proceeding as required under § 8.23(g) of this subpart.

§ 8.31 Formal complaints not stating a cause of action; defective pleadings.

(a) Any document purporting to be a formal complaint which does not state a cause of action under the Communications Act or a Commission rule or order will be dismissed. In such case, any amendment or supplement to such document will be considered a new filing which must be made within the statutory periods of limitations of actions contained in section 415 of the Communications Act.

(b) Any other pleading filed in a formal complaint proceeding not in conformity with the requirements of the applicable rules in this part may be deemed defective. In such case the Commission may strike the pleading or request that specified defects be corrected and that proper pleadings be filed with the Commission and served on all parties within a prescribed time as a condition to being made a part of the record in the proceeding.

§ 8.32 Discovery.

(a) A complainant may file with the Commission and serve on a defendant, concurrently with its complaint, a request for up to ten written interrogatories. A defendant may file with the Commission and serve on a complainant, during the period starting with the service of the complaint and ending with the service of its answer, a request for up to ten written interrogatories. A complainant may file with the Commission and serve on a defendant, within three calendar days of service of the defendant's answer, a request for up to five written interrogatories. Subparts of any interrogatory will be counted as separate interrogatories for purposes of compliance with this limit. Requests for interrogatories filed and served pursuant to this procedure may be used to seek discovery of any non-privileged matter that is relevant to the material facts in dispute in the pending proceeding, provided, however, that requests for interrogatories filed and served by a complainant after service of the defendant's answer shall be limited in scope to specific factual allegations made by the defendant in support of its affirmative defenses. This procedure may not be employed for the purpose of delay, harassment or obtaining information that is beyond the scope of permissible inquiry related to the material facts in dispute in the pending proceeding.

(b) Requests for interrogatories filed and served pursuant to paragraph (a) of this section shall contain a listing of the interrogatories requested and an explanation of why the information sought in each interrogatory is both necessary to the resolution of the dispute and not available from any other source.

(c) A responding party shall file with the Commission and serve on the propounding party any opposition and objections to the requests for interrogatories as follows:

(1) By the defendant, within ten calendar days of service of the requests for interrogatories served simultaneously with the complaint and within five calendar days of the requests for interrogatories served following service of the answer;

(2) By the complainant, within five calendar days of service of the requests for interrogatories; and

(3) In no event less than three calendar days prior to the initial status conference as provided for in § 8.35(a) of this subpart.

(d) Commission staff will consider the requests for interrogatories, properly filed and served pursuant to paragraph (a) of this section, along with any objections or oppositions thereto, properly filed and served pursuant to paragraph (b) of this section, at the initial status conference, as provided for in § 8.35(a)(5) of this subpart, and at that time determine the interrogatories, if any, to which parties shall respond, and set the schedule of such response.

(e) The interrogatories ordered to be answered pursuant to paragraph (d) of this section are to be answered separately and fully in writing under oath or affirmation by the party served, or if such party is a public or private corporation or partnership or association, by any officer or agent who shall furnish such information as is available to the party. The answers shall be signed by the person making them. The answers shall be filed with the Commission and served on the propounding party.

(f) A propounding party asserting that a responding party has provided an inadequate or insufficient response to a Commission-ordered discovery request may file a motion to compel within ten days of the service of such response, or as otherwise directed by Commission staff, pursuant to the requirements of § 8.30 of this subpart.

(g) The Commission may, in its discretion, require parties to provide documents to the Commission in a scanned or other electronic format that provides:

(1) Indexing by useful identifying information about the documents; and

(2) Technology that allows staff to annotate the index so as to make the format an efficient means of reviewing the documents.

(h) The Commission may allow additional discovery, including, but not limited to, document production, depositions and/or additional interrogatories. In its discretion, the Commission may modify the scope, means and scheduling of discovery in light of the needs of a particular case and the requirements of applicable statutory deadlines.

§ 8.33 Confidentiality of information produced or exchanged by the parties.

(a) Any materials generated in the course of a formal complaint proceeding may be designated as proprietary by that party if the party believes in good faith that the materials fall within an exemption to disclosure contained in the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(1) through (9). Any party asserting confidentiality for such materials shall so indicate by clearly marking each page, or portion thereof, for which a proprietary designation is claimed. If a proprietary designation is challenged, the party claiming confidentiality shall have the burden of demonstrating, by a preponderance of the evidence, that the material designated as proprietary falls under the standards for nondisclosure enunciated in the FOIA.

(b) Materials marked as proprietary may be disclosed solely to the following persons, only for use in prosecuting or defending a party to the complaint action, and only to the extent necessary to assist in the prosecution or defense of the case:

- (1) Counsel of record representing the parties in the complaint action and any support personnel employed by such attorneys;
 - (2) Officers or employees of the opposing party who are named by the opposing party as being directly involved in the prosecution or defense of the case;
 - (3) Consultants or expert witnesses retained by the parties;
 - (4) The Commission and its staff; and
 - (5) Court reporters and stenographers in accordance with the terms and conditions of this section.
- (c) These individuals shall not disclose information designated as proprietary to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than the prosecution or defense in the case before the Commission. Each individual who is provided access to the information shall sign a notarized statement affirmatively stating that the individual has personally reviewed the Commission's rules and understands the limitations they impose on the signing party.
- (d) No copies of materials marked proprietary may be made except copies to be used by persons designated in paragraph (b) of this section. Each party shall maintain a log recording the number of copies made of all proprietary material and the persons to whom the copies have been provided.
- (e) Upon termination of a formal complaint proceeding, including all appeals and petitions, all originals and reproductions of any proprietary materials, along with the log recording persons who received copies of such materials, shall be provided to the producing party. In addition, upon final termination of the complaint proceeding, any notes or other work product derived in whole or in part from the proprietary materials of an opposing or third party shall be destroyed.

§ 8.34 Other required written submissions.

- (a) The Commission may, in its discretion, or upon a party's motion showing good cause, require the parties to file briefs summarizing the facts and issues presented in the pleadings and other record evidence.
- (b) Unless otherwise directed by the Commission, all briefs shall include all legal and factual claims and defenses previously set forth in the complaint, answer, or any other pleading submitted in the proceeding. Claims and defenses previously made but not reflected in the briefs will be deemed abandoned. The Commission may, in its discretion, limit the scope of any briefs to certain subjects or issues. A party shall attach to its brief copies of all documents, data compilations, tangible things, and affidavits upon which such party relies or intends to rely to support the facts alleged and legal arguments made in its brief and such brief shall contain a full explanation of how each attachment is relevant to the issues and matters in dispute. All such attachments to a brief shall be documents, data compilations or tangible things, or affidavits made by persons, that were identified by any party in its information designations filed pursuant to §§ 8.24(a)(10)(i), (a)(10)(ii), 8.27(f)(1), (f)(2), and 8.29(d)(1), (d)(2) of this subpart. Any other supporting documentation or affidavits that is attached to a brief must be accompanied by a full explanation of the relevance of such materials and why such materials were not identified in the information designations. These briefs shall contain the proposed findings of fact and conclusions of law which the filing party is urging the Commission to adopt, with specific citation to the record, and supporting relevant authority and analysis.

(c) In cases in which discovery is not conducted, absent an order by the Commission that briefs be filed, parties may not submit briefs. If the Commission does authorize the filing of briefs in cases in which discovery is not conducted, briefs shall be filed concurrently by both the complainant and defendant at such time as designated by the Commission staff and in accordance with the provisions of this section.

(d) In cases in which discovery is conducted, briefs shall be filed concurrently by both the complainant and defendant at such time designated by the Commission staff.

(e) Briefs containing information which is claimed by an opposing or third party to be proprietary under § 8.33 of this subpart shall be submitted to the Commission in confidence pursuant to the requirements of § 0.459 of this chapter and clearly marked "Not for Public Inspection." An edited version removing all proprietary data shall also be filed with the Commission for inclusion in the public file. Edited versions shall be filed within five days from the date the unedited brief is submitted, and served on opposing parties.

(f) Initial briefs shall be no longer than twenty-five pages. Reply briefs shall be no longer than ten pages. Either on its own motion or upon proper motion by a party, the Commission staff may establish other page limits for briefs.

(g) The Commission may require the parties to submit any additional information it deems appropriate for a full, fair, and expeditious resolution of the proceeding, including affidavits and exhibits.

(h) The parties shall submit a joint statement of stipulated facts, disputed facts, and key legal issues no later than two business days prior to the initial status conference, scheduled in accordance with the provisions of § 8.35(a) of this subpart.

§ 8.35 Status conference.

(a) In any complaint proceeding, the Commission may, in its discretion, direct the attorneys and/or the parties to appear before it for a status conference. Unless otherwise ordered by the Commission, an initial status conference shall take place, at the time and place designated by the Commission staff, ten business days after the date the answer is due to be filed. A status conference may include discussion of:

- (1) Simplification or narrowing of the issues;
- (2) The necessity for or desirability of additional pleadings or evidentiary submissions;
- (3) Obtaining admissions of fact or stipulations between the parties as to any or all of the matters in controversy;
- (4) Settlement of all or some of the matters in controversy by agreement of the parties;
- (5) Whether discovery is necessary and, if so, the scope, type and schedule for such discovery;
- (6) The schedule for the remainder of the case and the dates for any further status conferences; and
- (7) Such other matters that may aid in the disposition of the complaint.

(b)(1) Parties shall meet and confer prior to the initial status conference to discuss:

- (i) Settlement prospects;
 - (ii) Discovery;
 - (iii) Issues in dispute;
 - (iv) Schedules for pleadings;
 - (v) Joint statement of stipulated facts, disputed facts, and key legal issues; and
- (2) Parties shall submit a joint statement of all proposals agreed to and disputes remaining as a result of such meeting to Commission staff at least two business days prior to the scheduled initial status conference.
- (c) In addition to the initial status conference referenced in paragraph (a) of this section, any party may also request that a conference be held at any time after the complaint has been filed.
- (d) During a status conference, the Commission staff may issue oral rulings pertaining to a variety of interlocutory matters relevant to the conduct of a formal complaint proceeding including, inter alia, procedural matters, discovery, and the submission of briefs or other evidentiary materials.
- (e) Parties may make, upon written notice to the Commission and all attending parties at least three business days prior to the status conference, an audio recording of the Commission staff's summary of its oral rulings. Alternatively, upon agreement among all attending parties and written notice to the Commission at least three business days prior to the status conference, the parties may make an audio recording of, or use a stenographer to transcribe, the oral presentations and exchanges between and among the participating parties, insofar as such communications are "on-the-record" as determined by the Commission staff, as well as the Commission staff's summary of its oral rulings. A complete transcript of any audio recording or stenographic transcription shall be filed with the Commission as part of the record, pursuant to the provisions of paragraph (f)(2) of this section. The parties shall make all necessary arrangements for the use of a stenographer and the cost of transcription, absent agreement to the contrary, will be shared equally by all parties that agree to make the record of the status conference.
- (f) The parties in attendance, unless otherwise directed, shall either:
- (1) Submit a joint proposed order memorializing the oral rulings made during the conference to the Commission by 5:30 pm, Eastern Time, on the business day following the date of the status conference, or as otherwise directed by Commission staff. In the event the parties in attendance cannot reach agreement as to the rulings that were made, the joint proposed order shall include the rulings on which the parties agree, and each party's alternative proposed rulings for those rulings on which they cannot agree. Commission staff will review and make revisions, if necessary, prior to signing and filing the submission as part of the record. The proposed order shall be submitted both as hard copy and on computer disk in accordance with the requirements of § 8.36(d) of this subpart; or
 - (2) Pursuant to the requirements of paragraph (e) of this section, submit to the Commission by 5:30 pm., Eastern Time, on the third business day following the status conference or as otherwise directed by Commission staff either:
 - (i) A transcript of the audio recording of the Commission staff's summary of its oral rulings;
 - (ii) A transcript of the audio recording of the oral presentations and exchanges between and among

the participating parties, insofar as such communications are “on-the-record” as determined by the Commission staff, and the Commission staff’s summary of its oral rulings; or

(iii) A stenographic transcript of the oral presentations and exchanges between and among the participating parties, insofar as such communications are “on-the-record” as determined by the Commission staff, and the Commission staff’s summary of its oral rulings.

(g) Status conferences will be scheduled by the Commission staff at such time and place as it may designate to be conducted in person or by telephone conference call.

(h) The failure of any attorney or party, following reasonable notice, to appear at a scheduled conference will be deemed a waiver by that party and will not preclude the Commission staff from conferring with those parties and/or counsel present.

§ 8.36 Specifications as to pleadings, briefs, and other documents; subscription.

(a) All papers filed in any formal complaint proceeding must be drawn in conformity with the requirements of §§ 1.49 and 1.50 of this chapter.

(b) All averments of claims or defenses in complaints and answers shall be made in numbered paragraphs. The contents of each paragraph shall be limited as far as practicable to a statement of a single set of circumstances. Each claim founded on a separate transaction or occurrence and each affirmative defense shall be separately stated to facilitate the clear presentation of the matters set forth.

(c) The original of all pleadings and other submissions filed by any party shall be signed by the party, or by the party’s attorney. The signing party shall include in the document his or her address, telephone number, facsimile number and the date on which the document was signed. Copies should be conformed to the original. Unless specifically required by rule or statute, pleadings need not be verified. The signature of an attorney or party shall be a certificate that the attorney or party has read the pleading, motion, or other paper; that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed solely for purposes of delay or for any other improper purpose.

(d) All proposed orders shall be submitted both as hard copies and on computer disk formatted to be compatible with the Commission’s computer system and using the Commission’s current word processing software. Each disk should be submitted in “read only” mode. Each disk should be clearly labeled with the party’s name, proceeding, type of pleading, and date of submission. Each disk should be accompanied by a cover letter. Parties who have submitted copies of tariffs or reports with their hard copies need not include such tariffs or reports on the disk. Upon showing of good cause, the Commission may waive the requirements of this paragraph.

§ 8.37 Copies; service; separate filings against multiple defendants.

(a) Complaints may generally be brought against only one named defendant; such actions may not be brought against multiple defendants unless the defendants are commonly owned or controlled, are alleged to have acted in concert, are alleged to be jointly liable to complainant, or the complaint concerns common questions of law or fact. Complaints may, however, be consolidated by the Commission for disposition.

(b) The complainant shall file an original copy of the complaint and, on the same day:

(1) File three copies of the complaint with the Office of the Commission Secretary;

(2) Serve two copies on the Enforcement Bureau;

and

(3) If a complaint is addressed against multiple defendants, file three copies of the complaint with the Office of the Commission Secretary for each additional defendant.

(c) Generally, a separate file is set up for each defendant. An original plus two copies shall be filed of all pleadings and documents, other than the complaint, for each file number assigned.

(d) The complainant shall serve the complaint by hand delivery on either the named defendant or one of the named defendant's registered agents for service of process on the same date that the complaint is filed with the Commission in accordance with the requirements of paragraph (b) of this section.

(e) Upon receipt of the complaint by the Commission, the Commission shall promptly send, by facsimile transmission to each defendant named in the complaint, notice of the filing of the complaint. The Commission shall send, by regular U.S. mail delivery, to each defendant named in the complaint, a copy of the complaint. The Commission shall additionally send, by regular U.S. mail to all parties, a schedule detailing the date the answer will be due and the date, time and location of the initial status conference.

(f) All subsequent pleadings and briefs filed in any formal complaint proceeding, as well as all letters, documents or other written submissions, shall be served by the filing party on the attorney of record for each party to the proceeding, or, where a party is not represented by an attorney, each party to the proceeding either by hand delivery, overnight delivery, or by facsimile transmission followed by regular U.S. mail delivery, together with a proof of such service in accordance with the requirements of § 1.47(g) of this chapter. Service is deemed effective as follows:

(1) Service by hand delivery that is delivered to the office of the recipient by 5:30 pm, local time of the recipient, on a business day will be deemed served that day. Service by hand delivery that is delivered to the office of the recipient after 5:30 pm, local time of the recipient, on a business day will be deemed served on the following business day;

(2) Service by overnight delivery will be deemed served the business day following the day it is accepted for overnight delivery by a reputable overnight delivery service such as, or comparable to, the US Postal Service Express Mail, United Parcel Service or Federal Express; or

(3) Service by facsimile transmission that is fully transmitted to the office of the recipient by 5:30 pm, local time of the recipient, on a business day will be deemed served that day. Service by facsimile transmission that is fully transmitted to the office of the recipient after 5:30 pm, local time of the recipient, on a business day will be deemed served on the following business day.

(g) Supplemental complaint proceedings. Supplemental complaints filed pursuant to § 8.25 of this subpart shall conform to the requirements set out in this section, except that the complainant need not submit a filing fee, and the complainant may effect service pursuant to paragraph (f) of this section rather than paragraph (d) of this section numerals.

APPENDIX C

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”),¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (“IRFA”) of the possible significant economic impact on a substantial number of small entities that might result from adoption of the rules proposed in the Notice of Proposed Rulemaking (“NPRM”). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the applicable deadlines for initial comments, or reply comments, as specified in the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (“SBA”).² In addition, the NPRM and this IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. The purpose of these proposed rules is to implement Congress’ mandate that people with disabilities have access to advanced communications services and equipment. Specifically, these rules are proposed to implement Sections 716 and 717 of the Communications Act of 1934, as amended, which were added by the “Twenty-First Century Communications and Video Accessibility Act of 2010” (“CVAA”).⁴ Given the fundamental role that advanced communications services have come to play in today’s world, the Commission believes that the CVAA represents the most significant governmental action for people with disabilities since the passage of the Americans with Disabilities Act of 1990 (“ADA”).⁵ The inability to access communications equipment and services can be life-threatening in emergency situations, can severely limit educational and employment opportunities, and can otherwise interfere with full participation in business, family, social, and other activities. Many of these proposals build on our rules implementing Section 255 of the Communications Act,⁶ which was added by the Telecommunications Act of 1996 and provides for the accessibility of telecommunications services and equipment.

3. The NPRM makes proposals to implement the requirements of Section 716, which requires that providers of advanced communications services and manufacturers of equipment used for such services make their products accessible to people with disabilities, unless it is not achievable to do so. It also proposes rules relating to Section 717, which requires the Commission to establish new recordkeeping and enforcement procedures for manufacturers and providers subject to Section 716 and Section 255.

4. The Commission proposes that manufacturers and service providers comply with the requirements of Section 716 either by building accessibility features into their equipment or service or by relying on third party applications or other accessibility solutions.⁷ The Commission also proposes that if it is not achievable for manufacturers and service providers to make their products accessible to people

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-12, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ *Id.*

⁴ Pub. L. No. 111-260, § 104.

⁵ Pub. L. No. 101-336, 104 Stat. 327 (1990) (codified at 42 U.S.C. §§ 12101-12213).

⁶ 47 U.S.C. § 255.

⁷ See NPRM at paras. 4, 77-80, 100.

with disabilities, then they must make their products compatible with specialized devices commonly used by people with disabilities.⁸

5. Furthermore, the Commission proposes that manufacturers and service providers consider performance objectives at the design stage as early and consistently as possible and implement such evaluation to the extent that it is achievable.⁹ The Commission proposes to incorporate into its performance objectives the outcome-oriented definitions of “accessible,” “compatibility,” and “usable” contained in its rules regarding the accessibility of telecommunications services and equipment.¹⁰ It seeks comment on whether it should adopt more specific performance objectives and the procedures and timelines that it should use to develop these objectives.¹¹

6. The Commission also proposes to issue prospective guidelines concerning the new accessibility requirements.¹² In addition, the Commission seeks comment on its proposal not to adopt any technical standards as safe harbors at this time.¹³

7. The Commission proposes that the accessibility requirements generally should apply to a wide range of manufacturers and service providers, including applications developers and providers of applications or services downloaded and run by users over service providers’ networks.¹⁴ It proposes, however, to consider exemptions for small entities and, if one or more such exemptions is adopted, further proposes to consider various criteria in setting standards for such exemptions.¹⁵ The Commission also proposes to consider waivers, both individual and blanket, for offerings which are designed for multiple purposes but are designed primarily for purposes other than using advanced communications services.¹⁶

8. The Commission proposes to define “achievable” to mean “with reasonable effort and expense.”¹⁷ In making determination about what is achievable under Section 716, the Commission proposes to consider the following four factors and give them equal weight:

- “The nature and cost of the steps needed to meet the requirements of this section with respect to the specific equipment or service in question;”
- “The technical and economic impact on the operation of the manufacturer or provider and on the operation of the specific equipment or service in question . . .;”
- “The type of operations of the manufacturer or provider;” and
- “The extent to which the service provider or manufacturer in question offers accessible services or equipment containing varying degrees of functionality and features, and

⁸ *Id.* at para. 85-90, 100.

⁹ *Id.* at para. 101.

¹⁰ *Id.* at para. 105 (*citing* Sections 6.3 and 7.3 of the Commission’s rules, 47 C.F.R. §§ 6.3 and 7.3).

¹¹ *Id.* at para. 106.

¹² *Id.* at paras. 114 -115.

¹³ *Id.* at paras. 112-113.

¹⁴ *Id.* at paras. 19-47.

¹⁵ *Id.* at para. 66.

¹⁶ *Id.* at paras. 52-60.

¹⁷ *Id.* at paras. 67-69.

offered at differing price points.”¹⁸

9. The Commission proposes procedures to facilitate the filing of complaints¹⁹ and proposes a 180-day deadline to issue an order resolving informal complaints concerning the accessibility of products.²⁰ In addition, the Commission proposes that manufacturers and providers subject to Section 716 and Section 255 maintain records of the (1) efforts to consult with people with disabilities; (2) accessibility features of their products; and (3) compatibility of their products with specialized devices.²¹

10. Moreover, in light of the range of potential complaints that may be filed against covered entities (including small entities) under the CVAA and Section 255, the NPRM seeks comment on how we should effectively implement Section 717’s recordkeeping requirements without imposing excessive burden or expense on covered entities or requiring multiple submissions of the same records to the Commission.²² The NPRM seeks input on what constitutes a “reasonable time period” during which covered entities will be required to maintain these records.²³

11. The NPRM also recognizes the variety of business models and operations of entities covered under its proposed rules and, therefore, proposes that the Commission not mandate any one form in which records must be kept in order to comply with Section 717.²⁴ The NPRM, however, seeks comment on whether there is any reason for the Commission to mandate a standard form of recordkeeping to comply with Section 717(a)(5) or to require covered entities to submit publicly available records or to re-submit records that the Commission already has received through a separate submission.²⁵ Finally, given that the statute provides that these mandatory recordkeeping requirements do not take effect until one year after the effective date of regulations promulgated by the Commission pursuant to Section 716(e), the NPRM seeks input regarding whether, and if so, in what fashion, the Commission should address this transition period, particularly for the purposes of enforcement.²⁶

B. Legal Basis

12. The legal basis for any action that may be taken pursuant to the NPRM is contained in Sections 1-4, 255, 303(r), 403, 503, 716, 717, 718 of the Communications Act of 1934, as Amended, 47 U.S.C. §§ 151-154, 255, 303(r), 403, 503, 617, 618, 619.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply

13. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that face possible significant economic impact by the adoption of proposed rules.²⁷ The RFA generally defines the term “small entity” as having the same meaning as the terms

¹⁸ *Id.* at paras. 68-76.

¹⁹ *Id.* at paras. 126-133.

²⁰ *Id.* at paras. 136-139.

²¹ *Id.* at para. 117.

²² *Id.* at para. 120.

²³ *Id.* at para. 121.

²⁴ *Id.* at para. 123.

²⁵ *Id.*

²⁶ *Id.*

²⁷ 5 U.S.C. § 604(a)(3).

“small business,” “small organization,” and “small governmental jurisdiction.”²⁸ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.²⁹ A “small business concern” is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.³⁰

14. To assist the Commission in analyzing the total number of small entities potentially affected by the rules proposed in the NPRM, we ask commenters to estimate the number of small entities that may be affected by those rules. To assist in assessing the nature and number of small entities that face possible significant economic impact by adoption of our proposed rules, we seek comment on the industry categories below and our estimates of the entities in each category that can, under relevant SBA standards or standards previously approved by the SBA for small businesses, be classified as small. Where a commenter proposes an exemption from the requirements of Section 716, we also seek estimates from that commenter on the number of small entities in each category that would be exempted from compliance with Section 716 under the proposed exemption, the percentage of market share for the service or product that would be exempted, and the economic impact, if any, on those entities that are not covered by the proposed exemption. While the NPRM and this IRFA seek comment on whether and how the Commission should exempt small entities from the requirements of Section 716 for the purposes of building a record on that issue, we will assume, for the narrow purpose of including a thorough regulatory impact analysis in this IRFA, that no such exemptions will be provided.

15. We divide the remainder of this section into three parts. In the first two, we identify those equipment manufacturers and those service providers that will be subject to our proposed rules and the industry categories within which they are classified. Within each category where possible, we estimate the total number of establishments or firms and the number of small entities (or the percentage) among them that face possible significant economic impact under the rules proposed in the NPRM.³¹ In the third part, we identify additional industry categories in which small entities face possible significant economic impact by the adoption of those proposed rules. In the third part, as in the first two parts, we estimate, where possible, the number of establishments or firms and the number of small entities (or the percentages) that would face such possible impact by adoption of our proposed rules.

16. *Small Businesses.* Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.³²

²⁸ 5 U.S.C. § 601(6).

²⁹ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

³⁰ 15 U.S.C. § 632.

³¹ Where possible, we provide Census data on the number of “firms” in a given industrial category but, where that data is not available, we provide data on the number of “establishments.” The number of “establishments” is a less helpful indicator of the number of businesses in a given category than the number of “firms,” because the latter term takes into account the concept of common ownership or control. Each single physical location counts as an “establishment,” even though several “establishments” may be owned or controlled by one “firm.” Thus, the data given in a category for “establishments” may reflect an inflated number of businesses in that category, including an inflated number of small businesses.

³² See SBA, Office of Advocacy, “Frequently Asked Questions,” <http://www.sba.gov/advocacy/7495/8425> (last visited Feb. 28, 2011).

1. Equipment Manufacturers

a. Manufacturers of Equipment to Provide VoIP

17. Entities manufacturing equipment used to provide interconnected Voice Over Internet Protocol (“VoIP”), non-interconnected VoIP, or both are generally found in one of two Census Bureau categories, “Electronic Computer Manufacturing”³³ or “Telephone Apparatus Manufacturing.”³⁴ While we recognize, as noted in the NPRM,³⁵ that the manufacturers of equipment used to provide interconnected VoIP will continue to be regulated under Section 255 rather than under Section 716, we include here an analysis of the possible significant economic impact of our proposed rules on manufacturers of equipment used to provide both interconnected and non-interconnected VoIP because it was not possible to separate available data on these two manufacturing categories for VoIP equipment. In light of this situation, our estimates below are in all likelihood overstating the number of small entities that manufacture equipment used to provide interconnected VoIP and which are subject to our proposed Section 716 rules. However, in the absence of more accurate data, we present these figures to provide as thorough an analysis of the impact on small entities as we can at this time, with the understanding that we will modify our analysis as more accurate data becomes available in this proceeding.

18. *Electronic Computer Manufacturing.* The Census Bureau defines this category to include “. . . establishments primarily engaged in manufacturing and/or assembling electronic computers, such as mainframes, personal computers, workstations, laptops, and computer servers. Computers can be analog, digital, or hybrid . . . The manufacture of computers includes the assembly or integration of processors, coprocessors, memory, storage, and input/output devices into a user-programmable final product.”³⁶

19. In this category, the SBA has deemed an electronic computer manufacturing business to be small if it has fewer than 1,000 employees.³⁷ For this category of manufacturers, Census data for 2007, which supersede similar data from the 2002 Census, show that there were 421 such establishments that operated that year.³⁸ Of those 421 establishments, 384 (approximately 91%) had fewer than 100 employees and only 37 had 100 employees or more, thus, while we cannot provide a more precise estimate, it is clear that a great majority of these establishments would be deemed small under the applicable SBA size standard.³⁹ Accordingly, the majority of establishments in this category can be considered small under that standard. On this basis, we estimate that approximately 91% or more of the manufacturers of equipment used to provide VoIP in this category are small and, thus, face possible significant economic impact from adoption of the rules proposed in the NPRM.

20. *Telephone Apparatus Manufacturing.* The Census Bureau defines this category to comprise “. . . establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be standalone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment,

³³ U.S. Census Bureau, 2007 NAICS Definitions, “334111 Electronic Computer Manufacturing”; <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=334111&search=2007%20NAICS%20Search>.

³⁴ U.S. Census Bureau, 2007 NAICS Definitions, “334210 Telephone Apparatus Manufacturing”; <http://www.census.gov/naics/2007/def/ND334210.HTM>.

³⁵ See NPRM at para.30.

³⁶ U.S. Census Bureau, 2007 NAICS Definitions, “334111 Electronic Computer Manufacturing”; <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=334111&search=2007%20NAICS%20Search>.

³⁷ 13 C.F.R. § 121.201, NAICS Code 334111.

³⁸ S. Census Bureau, American FactFinder, 2007 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334111 (rel. Nov. 16, 2010); <http://factfinder.census.gov>.

³⁹ *Id.*

cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways.”⁴⁰

21. In this category, the SBA has deemed a telephone apparatus manufacturing business to be small if it has fewer than 1,000 employees.⁴¹ For this category of manufacturers, Census data for 2007, which supersede similar data from the 2002 Census, show that there were 398 such establishments that operated that year.⁴² Of those 398 establishments, 393 (approximately 99%) had fewer than 1,000 employees and, thus, would be deemed small under the applicable SBA size standard.⁴³ Accordingly, the majority of establishments in this category can be considered small under that standard. On this basis, the Commission continues to estimate that approximately 99% or more of the manufacturers of equipment used to provide VoIP in this category are small and, thus, face possible significant economic impact from adoption of the rules proposed in the NPRM.

b. Manufacturers of Equipment to Provide Electronic Messaging

22. Entities that manufacture equipment (other than software) used to provide electronic messaging services are generally found in one of three Census Bureau categories: “Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,” “Electronic Computer Manufacturing,” or “Telephone Apparatus Manufacturing.”

23. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: “transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.”⁴⁴

24. In this category, the SBA has deemed a business manufacturing radio and television broadcasting equipment, wireless communications equipment, or both, to be small if it has fewer than 750 employees.⁴⁵ For this category of manufacturers, Census data for 2007, which supersede similar data from the 2002 Census, show that there were 398 such establishments that operated that year.⁴⁶ Of those 398 establishments, 393 (approximately 99%) had fewer than 1,000 employees and 912 (approximately 97%) had fewer than 500 employees. Between these two figures, the Commission estimates that about 915 establishments (approximately 97%) had fewer than 750 employees and, thus, would be considered small under the applicable SBA size standard. Accordingly, the majority of establishments in this category can be considered small under that standard. On this basis, Commission estimates that approximately 97% or more of the manufacturers of equipment used to provide electronic messaging services in this category are small and, thus, face possible significant economic impact from adoption of

⁴⁰ U.S. Census Bureau, 2007 NAICS Definitions, “334210 Telephone Apparatus Manufacturing”; <http://www.census.gov/naics/2007/def/ND334210.HTM>.

⁴¹ 13 C.F.R. § 121.201, NAICS Code 334210.

⁴² U.S. Census Bureau, American FactFinder, 2007 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334111 (rel. Nov. 16, 2010); <http://factfinder.census.gov>.

⁴³ *Id.*

⁴⁴ U.S. Census Bureau, 2007 NAICS Definitions, “334220 Radio and Television Broadcasting and Wireless Communications Equipment”; <http://www.census.gov/econ/industry/def/d334220.htm>.

⁴⁵ 13 C.F.R. § 121.201, NAICS Code 334220.

⁴⁶ U.S. Census Bureau, American FactFinder, 2007 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220 (rel. Nov. 16, 2010); <http://factfinder.census.gov>.

the rules proposed in the NPRM.

25. *Electronic Computer Manufacturing.* The Census Bureau defines this category, as noted above, to include “. . . establishments primarily engaged in manufacturing and/or assembling electronic computers, such as mainframes, personal computers, workstations, laptops, and computer servers. Computers can be analog, digital, or hybrid . . . The manufacture of computers includes the assembly or integration of processors, coprocessors, memory, storage, and input/output devices into a user-programmable final product.”⁴⁷

26. In this category, as noted above, the SBA has deemed an electronic computer manufacturing business to be small if it has fewer than 1,000 employees.⁴⁸ For this category of manufacturers, Census data for 2007, which supersede similar data from the 2002 Census, show that there were 421 such establishments that operated that year.⁴⁹ Of those 421 establishments, 384 (approximately 91%) had fewer than 100 employees and 37 had 100 employees or more, thus, while we cannot provide a more precise estimate, it is clear that a great majority of these establishments would be deemed small under the applicable SBA size standard.⁵⁰ Accordingly, the majority of establishments in this category can be considered small under that standard. On this basis, we estimate that approximately 91% or more of the manufacturers of equipment used to provide electronic messaging services in this category are small and, thus, face possible significant economic impact from adoption of the rules proposed in the NPRM.

27. *Telephone Apparatus Manufacturing.* The Census Bureau, as noted above, defines this category to comprise “. . . establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be stand alone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways.”⁵¹

28. In this category, as noted above, the SBA has deemed a telephone apparatus manufacturing business to be small if it has fewer than 1,000 employees.⁵² For this category of manufacturers, Census data for 2007, which supersede similar data from the 2002 Census, show that there were 398 such establishments that operated that year.⁵³ Of those 398 establishments, 393 (approximately 99%) had fewer than 1,000 employees and, thus, would be deemed small under the applicable SBA size standard.⁵⁴ Accordingly, the majority of establishments in this category can be considered small under that standard. On this basis, the Commission estimates that approximately 99% or more of the manufacturers of equipment used to provide electronic messaging services in this category are small and,

⁴⁷ U.S. Census Bureau, 2007 NAICS Definitions, “334111 Electronic Computer Manufacturing”; <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=334111&search=2007%20NAICS%20Search>.

⁴⁸ 13 C.F.R. § 121.201, NAICS Code 334111.

⁴⁹ S. Census Bureau, American FactFinder, 2007 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334111 (rel. Nov. 16, 2010); <http://factfinder.census.gov>.

⁵⁰ *Id.*

⁵¹ U.S. Census Bureau, 2007 NAICS Definitions, “334210 Telephone Apparatus Manufacturing”; <http://www.census.gov/naics/2007/def/ND334210.HTM>.

⁵² 13 C.F.R. § 121.201, NAICS Code 334210.

⁵³ S. Census Bureau, American FactFinder, 2007 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334111 (rel. Nov. 16, 2010); <http://factfinder.census.gov>.

⁵⁴ *Id.*

thus, face possible significant economic impact from adoption of the rules proposed in the NPRM.

c. Manufacturers of Equipment to Provide Interoperable Video Conferencing Services

29. Entities that manufacture equipment used to provide interoperable and other video conferencing services are generally found in the Census Bureau category: "Other Communications Equipment Manufacturing." The Census Bureau defines this category to include: "...establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment)."⁵⁵

30. *Other Communications Equipment Manufacturing.* In this category, the SBA has deemed a business manufacturing other communications equipment to be small if it has fewer than 750 employees.⁵⁶ For this category of manufacturers, Census data for 2007, which supersede similar data from the 2002 Census, show that there were 452 such establishments that operated that year.⁵⁷ Of those 452 establishments, all 452 (100 %) had fewer than 1,000 employees and 448 of those 452 (approximately 99%) had fewer than 500 employees.⁵⁸ Between these two figures, the Commission estimates that about 450 establishments (approximately 99.6%) had fewer than 750 employees and, thus, would be considered small under the applicable SBA size standard. Accordingly, the majority of establishments in this category can be considered small under that standard. On this basis, Commission estimates that approximately 99.6% or more of the manufacturers of equipment used to provide interoperable and other video conferencing services are small and, thus, face possible significant economic impact from adoption of the rules proposed in the NPRM.

d. Manufacturers of Software

31. Entities that publish software used to provide interconnected VoIP, non-interconnected VoIP, electronic messaging services, or interoperable video conferencing services are found in the Census Bureau category "Software Publishers."

32. *Software Publishers.* The Census Bureau defines this category to include "... establishments primarily engaged in computer software publishing or publishing and reproduction. Establishments in this industry carry out operations necessary for producing and distributing computer software, such as designing, providing documentation, assisting in installation, and providing support services to software purchasers. These establishments may design, develop, and publish, or publish only."⁵⁹

33. In this category, the SBA has deemed a publisher of software (or manufacturer of software under the CVAA) to be small if it has \$25 million or less in average annual receipts.⁶⁰ For this category of manufacturers, Census data for 2007, which supersede similar data from the 2002 Census,

⁵⁵ U.S. Census Bureau, 2007 NAICS Definitions, "334290

Other communications equipment manufacturing;" <http://www.census.gov/econ/industry/def/d334290.htm>

⁵⁶ 13 C.F.R. § 121.201, NAICS Code 334220.

⁵⁷ U.S. Census Bureau, American FactFinder, 2007 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334290 (rel. Nov. 16, 2010); <http://factfinder.census.gov>.

⁵⁸ *Id.*

⁵⁹ U.S. Census Bureau, 2007 NAICS Definitions, "511210 Software Publishers;" <http://www.census.gov/econ/industry/def/d511210.htm>

⁶⁰ 13 C.F.R. § 121.201, NAICS Code 511210.

show that there were 5,313 such firms that operated that year.⁶¹ Of those 5,313 firms, 4,956 (approximately 93%) had \$25 million or less in average annual receipts and, thus, would be deemed small under the applicable SBA size standard.⁶² Accordingly, the majority of establishments in this category can be considered small under that standard. On this basis, Commission estimates that approximately 93% or more of the manufacturers of software used to provide interconnected VoIP, non-interconnected VoIP, electronic messaging services, and interoperable video conferencing services in this category are small and, thus, face possible significant economic impact from adoption of the rules proposed in the NPRM.

2. Service Providers

a. Providers of VoIP

34. Entities that provide interconnected or non-interconnected VoIP or both are generally found in one of two Census Bureau categories, “Wired Telecommunications Carriers” or “All Other Telecommunications.”

35. *Wired Telecommunications Carriers.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”⁶³

36. In this category, the SBA has deemed a wired telecommunications carrier to be small if it has fewer than 1,500 employees.⁶⁴ For this category of carriers, Census data for 2007, which supersedes similar data from the 2002 Census, shows 3,188 firms in this category.⁶⁵ Of these 3,188 firms, only 44 (approximately 1%) had 1,000 or more employees.⁶⁶ While we could not find precise Census data on the number of firms in the group with fewer than 1,500 employees, it is clear that at least the 3,188 firms with fewer than 1,000 employees would be in that group. Thus, at least 3,144 of these 3,188 firms (approximately 99%) had fewer than 1,500 employees. Accordingly, the Commission estimates that at least 3,144 (approximately 99%) had fewer than 1,500 employees and thus, would be considered small under the applicable SBA size standard. On this basis, the Commission estimates that approximately 99% or more of the providers of interconnected VoIP, non-interconnected VoIP, or both in this category are small and, thus, face possible significant economic impact from adoption of the rules proposed in the NPRM.⁶⁷

⁶¹ U.S. Census Bureau, American FactFinder, 2007 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 511210 (rel. Nov. 19, 2010); <http://factfinder.census.gov>.

⁶² *Id.*

⁶³ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers”; <http://www.census.gov/econ/industry/def/d517110.htm>

⁶⁴ 13 C.F.R. § 121.201, NAICS Code 517110.

⁶⁵ U.S. Census Bureau, American FactFinder, 2007 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 517110 (rel. Nov. 19, 2010); <http://factfinder.census.gov>.

⁶⁶ *Id.*

⁶⁷ As noted in paragraph 17 above with regard to the distinction between manufacturers of equipment used to (continued....)

37. *All Other Telecommunications.* Under the 2007 U.S. Census definition of firms included in the category “All Other Telecommunications (NAICS Code 517919)” comprises “establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.”⁶⁸

38. In this category, the SBA has deemed a provider of “all other telecommunications” services to be small if it has \$25 million or less in average annual receipts.⁶⁹ For this category of service providers, Census data for 2007, which supersede similar data from the 2002 Census, show that there were 2,383 such firms that operated that year.⁷⁰ Of those 2,383 firms, 2,346 (approximately 98%) had \$25 million or less in average annual receipts and, thus, would be deemed small under the applicable SBA size standard. Accordingly, the majority of establishments in this category can be considered small under that standard. On this basis, Commission estimates that approximately 98% or more of the providers of interconnected VoIP, non-interconnected VoIP, or both in this category are small and, thus, face possible significant economic impact from adoption of the rules proposed in the NPRM.⁷¹

b. Providers of Electronic Messaging Services

39. Entities that provide electronic messaging services are generally found in one of the following Census Bureau categories, “Wireless Telecommunications Carriers (except Satellites),” “Wired Telecommunications,” or “Internet Publishing and Broadcasting and Web Search Portals.”

40. *Wireless Telecommunications Carriers (except Satellites).* The Census Bureau defines this category to include “. . . establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services.”⁷²

41. In this category, the SBA has deemed a wireless telecommunications carrier to be small if it has fewer than 1,500 employees.⁷³ For this category of carriers, Census data for 2007, which supersede

(Continued from previous page)

provide inter-connected VoIP and manufactures of equipment to provide non-interconnected VoIP, our estimates of the number of the number of providers of non-interconnected VoIP (and the number of small entities within that group) are in all likelihood overstated because we could not draw in the data a distinction between such providers and those who provide interconnected VoIP. However, in the absence of more accurate data, we present these figures to provide as thorough an analysis of the impact on small entities as we can at this time, with the understanding that we will modify our analysis as more accurate data becomes available in this proceeding.

⁶⁸ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2007%20NAICS%20Search>

⁶⁹ 13 C.F.R. § 121.201, NAICS Code 517919.

⁷⁰ U.S. Census Bureau, American FactFinder, 2007 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 517919 (rel. Nov. 19, 2010); <http://factfinder.census.gov>.

⁷¹ See discussion *supra* note 67, regarding possible overestimation of firms and small entities providing non-interconnected VoIP services.

⁷² U.S. Census Bureau, 2007 NAICS Definitions, “Wireless Telecommunications Carriers (Except Satellites)”; <http://www.census.gov/econ/industry/def/d517210.htm>

⁷³ 13 C.F.R. § 121.201, NAICS Code 517210.

similar data from the 2002 Census, shows 1,383 firms in this category.⁷⁴ Of these 1,383 firms, only 15 (approximately 1%) had 1,000 or more employees.⁷⁵ While there is no precise Census data on the number of firms the group with fewer than 1,500 employees, it is clear that at least the 1,368 firms with fewer than 1,000 employees would be found in that group. Thus, at least 1,368 of these 1,383 firms (approximately 99%) had fewer than 1,500 employees. Accordingly, the Commission estimates that at least 1,368 (approximately 99%) had fewer than 1,500 employees and, thus, would be considered small under the applicable SBA size standard. On this basis, Commission estimates that approximately 99% or more of the providers of electronic messaging services in this category are small and, thus, face possible significant economic impact from adoption of the rules proposed in the NPRM.

42. *Wired Telecommunications Carriers.* For the 2007 US Census definition of firms included in the category, “Wired Telecommunications Carriers (NAICS Code 517110),” see paragraph 35 above.

43. In this category, the SBA has deemed a wired telecommunications carrier to be small if it has fewer than 1,500 employees.⁷⁶ For this category of carriers, Census data for 2007, which supersede similar data from the 2002 Census, shows 3,188 firms in this category.⁷⁷ Of these 3,188 firms, only 44 (approximately 1%) had 1,000 or more employees.⁷⁸ While we could not find precise Census data on the number of firms in the group with fewer than 1,500 employees, it is clear that at least the 3,188 firms with fewer than 1,000 employees would be in that group. Thus, at least 3,144 of these 3,188 firms (approximately 99%) had fewer than 1,500 employees. Accordingly, the Commission estimates that of these 3,188 at least 3,144 (approximately 99%) had fewer than 1,500 employees and, thus, would be considered small under the applicable SBA size standard. On this basis, the Commission estimates that approximately 99% or more of the providers of electronic messaging services in this category are small and, thus, face possible significant economic impact from adoption of the rules proposed in the NPRM.

44. *Internet Publishing and Broadcasting and Web Search Portals.* The Census Bureau defines this category to include “. . . establishments primarily engaged in 1) publishing and/or broadcasting content on the Internet exclusively or 2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals). The publishing and broadcasting establishments in this industry do not provide traditional (non-Internet) versions of the content that they publish or broadcast. They provide textual, audio, and/or video content of general or specific interest on the Internet exclusively. Establishments known as Web search portals often provide additional Internet services, such as e-mail, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users.”

45. In this category, the SBA has deemed an Internet publisher or Internet broadcaster or the provider of a web search portal on the Internet to be small if it has fewer than 500 employees.⁷⁹ For this category of manufacturers, Census data for 2007, which supersede similar data from the 2002 Census,

⁷⁴ U.S. Census Bureau, American FactFinder, 2007 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 57210 (rel. Nov. 19, 2010); <http://factfinder.census.gov>.

⁷⁵ *Id.*

⁷⁶ 13 C.F.R. § 121.201, NAICS Code 517110.

⁷⁷ U.S. Census Bureau, American FactFinder, 2007 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 517110 (rel. Nov. 19, 2010); <http://factfinder.census.gov>.

⁷⁸ *Id.*

⁷⁹ 13 C.F.R. § 121.201, NAICS Code 519130.

show that there were 2,705 such firms that operated that year.⁸⁰ Of those 2,705 firms, 2,682 (approximately 99%) had fewer than 500 employees and, thus, would be deemed small under the applicable SBA size standard.⁸¹ Accordingly, the majority of establishments in this category can be considered small under that standard. On this basis, Commission estimates that approximately 99% or more of the providers of electronic messaging services in this category are small and, thus, face possible significant economic impact from adoption of the rules proposed in the NPRM.

c. Providers of Interoperable Video Conferencing Services

46. Entities that provide interoperable video conferencing services are found in the Census Bureau Category “All Other Telecommunications.”

47. *All Other Telecommunications.* For the 2007 US Census definition of firms included in the category, “All Other Telecommunications (NAICS Code 517919),” see paragraph 37 above.

48. In this category, the SBA has deemed a provider of “all other telecommunications” services to be small if it has \$25 million or less in average annual receipts.⁸² For this category of service providers, Census data for 2007, which supersede similar data from the 2002 Census, show that there were 2,383 such firms that operated that year.⁸³ Of those 2,383 firms, 2,346 (approximately 98%) had \$25 million or less in average annual receipts and, thus, would be deemed small under the applicable SBA size standard. Accordingly, the majority of establishments in this category can be considered small under that standard. On this basis, Commission estimates that approximately 98% or more of the providers of interoperable video conferencing services are small and, thus, face possible significant economic impact from adoption of the rules proposed in the NPRM.

3. Additional Industry Categories.

a. Certain Wireless Carriers and Service Providers

49. *Cellular Licensees.* The SBA has developed a small business size standard for small businesses in the category “Wireless Telecommunications Carriers (except satellite).”⁸⁴ Under that SBA category, a business is small if it has 1,500 or fewer employees.⁸⁵ The census category of “Cellular and Other Wireless Telecommunications” is no longer used and has been superseded by the larger category “Wireless Telecommunications Carriers (except satellite)”. The Census Bureau defines this larger category to include “. . . establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services.”⁸⁶

50. In this category, the SBA has deemed a wireless telecommunications carrier to be small if it has fewer than 1,500 employees.⁸⁷ For this category of carriers, Census data for 2007, which supersede

⁸⁰ U.S. Census Bureau, American FactFinder, 2007 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 519130 (rel. Nov. 19, 2010); <http://factfinder.census.gov>.

⁸¹ *Id.*

⁸² 13 C.F.R. § 121.201, NAICS Code 517919.

⁸³ U.S. Census Bureau, American FactFinder, 2007 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 517919 (rel. Nov. 19, 2010); <http://factfinder.census.gov>.

⁸⁴ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517210.

⁸⁵ *Id.*

⁸⁶ U.S. Census Bureau, 2007 NAICS Definitions, “Wireless Telecommunications Carriers (Except Satellites)”; <http://www.census.gov/econ/industry/def/d517210.htm>

⁸⁷ 13 C.F.R. § 121.201, NAICS Code 517210.

similar data from the 2002 Census, shows 1,383 firms in this category.⁸⁸ Of these 1,383 firms, only 15 (approximately 1%) had 1,000 or more employees.⁸⁹ While there is no precise Census data on the number of firms the group with fewer than 1,500 employees, it is clear that at least the 1,368 firms with fewer than 1,000 employees would be found in that group. Thus, at least 1,368 of these 1,383 firms (approximately 99%) had fewer than 1,500 employees. Accordingly, the Commission estimates that at least 1,368 (approximately 99%) had fewer than 1,500 employees and, thus, would be considered small under the applicable SBA size standard. On this basis, Commission estimates that approximately 99% or more of the providers of electronic messaging services in this category are small and, thus, face possible significant economic impact from adoption of the rules proposed in the NPRM.

51. *Specialized Mobile Radio.* The Commission awards “small entity” bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years.⁹⁰ The Commission awards “very small entity” bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years.⁹¹ The SBA has approved these small business size standards for the 900 MHz Service.⁹² The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.⁹³ A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 licenses. One bidder claiming small business status won five licenses.⁹⁴

52. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders that won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed “small business” status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

53. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR services pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. In addition, we do not know how many of these

⁸⁸ U.S. Census Bureau, American FactFinder, 2007 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 517210 (rel. Nov. 19, 2010); <http://factfinder.census.gov>.

⁸⁹ *Id.*

⁹⁰ 47 C.F.R. § 90.814(b)(1).

⁹¹ *Id.*

⁹² See Letter from Aida Alvarez, Administrator, Small Business Administration, to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, dated August 10, 1999.

⁹³ See “Correction to Public Notice DA 96-586 ‘FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,’” *Public Notice*, 18 FCC Rcd 18367 (WTB 1996).

⁹⁴ See “Multi-Radio Service Auction Closes,” *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

firms have 1,500 or fewer employees. The Commission assumes, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities.

54. *Advanced Wireless Services.* In 2008, the Commission conducted the auction of Advanced Wireless Services (“AWS”) licenses.⁹⁵ This auction, which was designated as Auction 78, offered 35 licenses in the AWS 1710-1755 MHz and 2110-2155 MHz bands (“AWS-1”). The AWS-1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded \$15 million and did not exceed \$40 million for the preceding three years (“small business”) received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed \$15 million for the preceding three years (“very small business”) received a 25 percent discount on its winning bid. A bidder that had a combined total assets of less than \$500 million and combined gross revenues of less than \$125 million in each of the last two years qualified for entrepreneur status.⁹⁶ Four winning bidders that identified themselves as very small businesses won 17 licenses.⁹⁷ Three of the winning bidders that identified themselves as small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

55. *700 MHz Band Commercial Licensees.* There is 80 megahertz of non-Guard Band spectrum in the 700 MHz Band that is designated for commercial use: 698-757, 758-763, 776-787, and 788-793 MHz Bands. With one exception, the Commission adopted criteria for defining two groups of small businesses for purposes of determining their eligibility for bidding credits at auction. These two categories are: (1) “small business,” which is defined as an entity with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years; and (2) “very small business,” which is defined as an entity with attributed average annual gross revenues that do not exceed \$15 million for the preceding three years.⁹⁸ In Block C of the Lower 700 MHz Band (710-716 MHz and 740-746 MHz), which was licensed on the basis of 734 Cellular Market Areas, the Commission adopted a third criterion for determining eligibility for bidding credits: an “entrepreneur,” which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.⁹⁹ The SBA has approved these small size standards.¹⁰⁰

56. An auction of 740 licenses for Blocks C (710-716 MHz and 740-746 MHz) and D (716-722 MHz) of the Lower 700 MHz Band commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business, or entrepreneur status and won a total of 329 licenses.¹⁰¹ A second auction commenced on May 28, 2003, and closed on June 13, 2003,

⁹⁵ See AWS-1 and Broadband PCS Procedures Public Notice, 23 FCC Rcd 7496. Auction 78 also included an auction of Broadband PCS licenses.

⁹⁶ *Id.* at 7521-22.

⁹⁷ See “Auction of AWS-1 and Broadband PCS Licenses Closes, Winning Bidders Announced for Auction 78, Down Payments Due September 9, 2008, FCC Forms 601 and 602 Due September 9, 2008, Final Payments Due September 23, 2008, Ten-Day Petition to Deny Period”, *Public Notice*, 23 FCC Rcd 12749 (2008).

⁹⁸ See Auction of 700 MHz Band Licenses Scheduled for Jan. 24, 2008, AU Docket No. 07-157, *Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76*, DA 07-4171 at ¶ 70 (WTB rel. Oct. 5, 2007); Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022, 1087-88 (2002).

⁹⁹ *Id.* at 1088.

¹⁰⁰ See Letter from Aida Alvarez, Administrator, Small Business Administration, to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, dated August 10, 1999.

¹⁰¹ See “Lower 700 MHz Band Auction Closes,” *Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

and included 256 licenses: five EAG licenses and 251 CMA licenses.¹⁰² Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.¹⁰³

57. The remaining 62 megahertz of commercial spectrum was auctioned on January 24 through March 18, 2008. As explained above, bidding credits for all of these licenses were available to “small businesses” and “very small businesses.” Auction 73 concluded with 1090 provisionally winning bids covering 1091 licenses and totaling \$19,592,420,000. The provisionally winning bids for the A, B, C, and E Block licenses exceeded the aggregate reserve prices for those blocks. The provisionally winning bid for the D Block license, however, did not meet the applicable reserve price and thus did not become a winning bid. Approximately 55 small businesses had winning bids.¹⁰⁴ Currently, the 10 remaining megahertz associated with the D block have not yet been assigned.¹⁰⁵

58. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA’s small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. Census data for 2007, which supersede data from the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

59. *Government Transfer Bands.* The Commission adopted small business size standards for the unpaired 1390-1392 MHz, 1670-1675 MHz, and the paired 1392-1395 MHz and 1432-1435 MHz bands.¹⁰⁶ Specifically, with respect to these bands, the Commission defined an entity with average annual gross revenues for the three preceding years not exceeding \$40 million as a “small business,” and an entity with average annual gross revenues for the three preceding years not exceeding \$15 million as a “very small business.”¹⁰⁷ SBA has approved these small business size standards for the aforementioned bands.¹⁰⁸ Correspondingly, the Commission adopted a bidding credit of 15 percent for “small businesses”

¹⁰² See “Lower 700 MHz Band Auction Closes,” *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

¹⁰³ *Id.*

¹⁰⁴ See “Auction of 700 MHz Band Licenses Closes,” *Public Notice*, 23 FCC Rcd 4572 (WTB 2008).

¹⁰⁵ See fcc.gov website at http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=73.

¹⁰⁶ See Amendments to Parts 1, 2, 27 and 90 of the Commission’s Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands, 17 FCC Rcd 9980 (2002).

¹⁰⁷ See Reallocation of the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands, WT Docket No. 02-8, *Notice of Proposed Rulemaking*, 17 FCC Rcd 2500, 2550-51 ¶¶ 144-146 (2002). To be consistent with the size standard of “very small business” proposed for the 1427-1432 MHz band for those entities with average gross revenues for the three preceding years not exceeding \$3 million, the *Service Rules Notice* proposed to use the terms “entrepreneur” and “small business” to define entities with average gross revenues for the three preceding years not exceeding \$40 million and \$15 million, respectively. Because the Commission is not adopting small business size standards for the 1427-1432 MHz band, it instead uses the terms “small business” and “very small business” to define entities with average gross revenues for the three preceding years not exceeding \$40 million and \$15 million, respectively.

¹⁰⁸ See Letter from Hector V. Barreto, Administrator, Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, dated Jan. 18, 2002.

and a bidding credit of 25 percent for “very small businesses.”¹⁰⁹ This bidding credit structure was found to have been consistent with the Commission’s schedule of bidding credits, which may be found at section 1.2110(f)(2) of the Commission’s rules.¹¹⁰ The Commission found that these two definitions will provide a variety of businesses seeking to provide a variety of services with opportunities to participate in the auction of licenses for this spectrum and will afford such licensees, who may have varying capital costs, substantial flexibility for the provision of services.¹¹¹ The Commission noted that it had long recognized that bidding preferences for qualifying bidders provide such bidders with an opportunity to compete successfully against large, well-financed entities.¹¹² The Commission also noted that it had found that the use of tiered or graduated small business definitions is useful in furthering its mandate under Section 309(j) of the Act to promote opportunities for and disseminate licenses to a wide variety of applicants.¹¹³ An auction for one license in the 1670-1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

b. Certain Equipment Manufacturers and Stores

60. *Part 15 Handset Manufacturers.* Manufacturers of unlicensed wireless handsets may also become subject to requirements in this proceeding for their handsets used to provide VoIP applications. The Commission has not developed a definition of small entities applicable to unlicensed communications handset manufacturers. Therefore, we will utilize the SBA definition applicable to Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.”¹¹⁴ The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees.¹¹⁵ According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire

¹⁰⁹ Such bidding credits are codified for the unpaired 1390-1392 MHz, paired 1392-1395 MHz, and the paired 1432-1435 MHz bands in 47 C.F.R. § 27.807. Such bidding credits are codified for the unpaired 1670-1675 MHz band in 47 C.F.R. § 27.906.

¹¹⁰ In the *Part 1 Third Report and Order*, the Commission adopted a standard schedule of bidding credits, the levels of which were developed based on its auction experience. *Part 1 Third Report and Order*, 13 FCC Rcd at 403-04 ¶ 47; see also 47 C.F.R. § 1.2110(f)(2).

¹¹¹ See *Service Rules Notice*, 17 FCC Rcd at 2550-51 ¶ 145.

¹¹² See, e.g., Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems; Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, WT Docket No. 96-18, PR Docket No. 93-253, *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, 14 FCC Rcd 10030, 10091 ¶ 112 (1999).

¹¹³ 47 U.S.C. § 309(j)(3)(B), (4)(C)-(D). The Commission will also not adopt special preferences for entities owned by minorities or women, and rural telephone companies. The Commission did not receive any comments on this issue, and it does not have an adequate record to support such special provisions under the current standards of judicial review. See *Adarand Constructors v. Peña*, 515 U.S. 200 (1995) (requiring a strict scrutiny standard of review for government mandated race-conscious measures); *United States v. Virginia*, 518 U.S. 515 (1996) (applying an intermediate standard of review to a state program based on gender classification).

¹¹⁴ U.S. Census Bureau, 2002 NAICS Definitions, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing”; <http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342>.

¹¹⁵ 13 C.F.R. § 121.201, NAICS code 334220.

year.¹¹⁶ Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999.¹¹⁷ Thus, under this size standard, the majority of firms can be considered small.

61. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.” The SBA has developed a small business size standard for firms in this category, which is: all such firms having 750 or fewer employees.¹¹⁸ According to Census Bureau data for 2007, there were a total of 919 firms in this category that operated for the entire year. Of this total, 777 had less than 100 employees, and an additional 148 had over 100 employees. Thus, while we can provide a more precise estimate, under this size standard, the large majority of these firms can be considered small.

62. *Radio, Television, and Other Electronics Stores.* The Census Bureau defines this economic census category as follows: “This U.S. industry comprises: (1) establishments known as consumer electronics stores primarily engaged in retailing a general line of new consumer-type electronic products; (2) establishments specializing in retailing a single line of consumer-type electronic products (except computers); or (3) establishments primarily engaged in retailing these new electronic products in combination with repair services.”¹¹⁹ The SBA has developed a small business size standard for Radio, Television, and Other Electronics Stores, which is: all such firms having \$9 million or less in annual receipts.¹²⁰ According to Census Bureau data for 2007, there were 18,291 firms in this category that operated for the entire year.¹²¹ Of this total, 17,369 firms had annual sales of under \$5 million, and 533 firms had sales of \$5 million or more but less than \$10 million.¹²² Thus, the majority of firms in this category can be considered small.

c. Wireline Carriers and Service Providers

63. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹²³ Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1000 or more. According to Commission

¹¹⁶ U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220 (rel. May 26, 2005); <http://factfinder.census.gov>. In this category, the Census breaks out data for firms or companies only to give the total number for 2002, which was 929.

¹¹⁷ *Id.* An additional 18 establishments had employment of 1,000 or more.

¹¹⁸ 13 C.F.R. § 121.201, NAICS code 334220.

¹¹⁹ U.S. Census Bureau, 2002 NAICS Definitions, “443112 Radio, Television, and Other Electronics Stores”; <http://www.census.gov/epcd/naics02/def/NDEF443.HTM>.

¹²⁰ 13 C.F.R. § 121.201, NAICS code 443112.

¹²¹ U.S. Census Bureau, 2002 Economic Census, Industry Series: Retail Trade, Table 4, Sales Size of Firms for the United States: 2002, NAICS code 443112 (issued Nov. 2005).

¹²² *Id.* An additional 123 firms had annual sales of \$10 million or more. As a measure of small business prevalence, the data on annual sales are roughly equivalent to what one would expect from data on annual receipts.

¹²³ 13 C.F.R. § 121.201, NAICS code 517110.

data, 1,307 carriers reported that they were incumbent local exchange service providers.¹²⁴ Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.¹²⁵ Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules proposed in the NPRM. Thus under this category, the majority of these incumbent local exchange service providers can be considered small.¹²⁶

64. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹²⁷ Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers can be considered small entities.¹²⁸ According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.¹²⁹ Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.¹³⁰ In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.¹³¹ In addition, 72 carriers have reported that they are Other Local Service Providers.¹³² Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees.¹³³ Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the NPRM.

65. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹³⁴ Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size

¹²⁴ See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

¹²⁵ See *id.*

¹²⁶ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=600&-ds_name=EC0751SSSZ5&-lang=en.

¹²⁷ 13 C.F.R. § 121.201, NAICS code 517110.

¹²⁸ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=600&-ds_name=EC0751SSSZ5&-lang=en

¹²⁹ See *Trends in Telephone Service* at Table 5.3.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ 13 C.F.R. § 121.201, NAICS code 517110.